

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KELLI GRAY and all others
similarly situated,

Plaintiffs,

v.

SUTTELL & ASSOCIATES; MIDLAND
FUNDING, LLC; MARK T. CASE and
JANE DOE CASE, husband and wife;
and KAREN HAMMER and JOHN DOE
HAMMER,

Defendants.

EVA LAUBER, DANE SCOTT, SCOTT
BOOLEN, JOEL FINCH, and all
others similarly situated,

Plaintiffs,

v.

ENCORE CAPITAL GROUP, INC.;
MIDLAND FUNDING, LLC; MIDLAND
CREDIT MANAGEMENT, INC.; SUTTELL
& HAMMER, PS.; MARK T. CASE and
JANE DOE CASE, husband and wife;
MALISA L. GURULE and JOHN DOE
GURULE; KAREN HAMMER and ISAAC
HAMMER, wife and husband; WILLIAM
SUTTELL and JANE DOE SUTTELL,
husband and wife;

Defendants.

NO. CV-09-251-EFS
(NO. CV-10-5132-EFS)

**ORDER GRANTING THE ENCORE
DEFENDANTS' MOTION TO
COMPEL EVA LAUBER TO
ARBITRATE HER CLAIMS**

Before the Court is Defendants Encore Capital Group, Inc.
("Encore"), Midland Funding, LLC ("Midland"), and Midland Credit
Management, Inc.'s ("MCH") (collectively, the "Encore Defendants") Motion

1 to Compel Eva Lauber to Arbitrate Her Claims, ECF No. [356](#). The Court
2 initially heard oral argument on this motion on July 6, 2011, ECF No.
3 [400](#); following the hearing, the parties filed supplemental materials
4 pertaining to this motion. After reviewing the submitted material and
5 relevant legal authority, the Court grants the Encore Defendants' motion.

6 **A. Background**

7 In November 2003, Ms. Lauber entered into a loan agreement
8 ("Agreement") with Household Finance Corporation (HFC). The Agreement
9 contained a separate two-page document titled, "Arbitration Rider," which
10 states, "By signing this Arbitration Rider, you agree that either Lender
11 or you may request that any claim, dispute, or controversy . . . arising
12 from or relating to this Agreement . . . shall be resolved, upon the
13 election of you or us by binding arbitration pursuant to this arbitration
14 provision" ECF No. [358](#)-4 at 1. On the Arbitration Rider's
15 second page, above Ms. Lauber's signature, is the following statement:

16 **THE PARTIES ACKNOWLEDGE THAT THEY HAD A RIGHT TO LITIGATE**
17 **CLAIMS THROUGH A COURT BEFORE A JUDGE OR JURY, BUT WILL NOT**
18 **HAVE THAT RIGHT IF EITHER PARTY ELECTS ARBITRATION. THE**
19 **PARTIES HEREBY KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO**
20 **LITIGATE SUCH CLAIMS IN A COURT BEFORE A JUDGE OR JURY UPON**
21 **ELECTION OF ARBITRATION BY EITHER PARTY.**

22 *Id.* at 2.

23 Ms. Lauber failed to pay the consumer debt. HFC assigned Ms.
24 Lauber's account and all of its rights and interests pertaining to the
25 Agreement to Midland Funding, LLC. Midland then brought a state court
26 action against Ms. Lauber to collect the unpaid consumer debt. On
November 10, 2010, Ms. Lauber filed a class action against Midland, its
parent company, Encore, and its affiliate, MCH, alleging violations of

1 the Fair Debt Collections Practices Act (FDCPA) and Washington state
2 consumer protection statutes ("Lauber lawsuit"). The Lauber lawsuit was
3 consolidated with the previously-filed Gray lawsuit. ECF No. [182](#). The
4 Encore Defendants filed their motion to arbitrate on June 6, 2011.

5 **B. Authority and Analysis**

6 The Arbitration Rider is expressly governed by the Federal
7 Arbitration Act (FAA), 9 U.S.C. §§ 1-16, which favors arbitration
8 agreements. See *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460
9 U.S. 1, 24 (1983). Therefore, the Court must construe the Arbitration
10 Rider's language in favor of arbitration. See *id.* at 25. And the
11 Arbitration Rider controls unless the governing Washington state law's
12 generally-applicable contract defenses apply. See *Al-Safin v. Circuit*
13 *City Stores, Inc.*, 394 F.3d 1254, 1257 (9th Cir. 2005).

14 It is undisputed that Ms. Lauber's claims fall within those
15 permitted to be subject to arbitration under the Arbitration Rider. The
16 dispute instead centers on whether the Encore Defendants, non-signatories
17 to the Arbitration Rider, may enforce it and, if so, whether they waived
18 their right to seek arbitration by delaying their invocation of the
19 Arbitration Rider.

20 The question of whether a non-signatory may enforce an arbitration
21 agreement is a question for this Court to decide. See *Nagrampa v.*
22 *MailCoups, Inc.*, 469 F.3d 1257, 1268 (9th Cir. 2006) ("The arbitrability
23 of a particular dispute is a threshold issue to be decided by the
24 courts."); *In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales,*
25 *Practices, & Prods. Liability Litig. ("In re Toyota")*, No. 8:10ML-02151-
26 JVS (FMOx), 2012 WL 826854, *16-17 (C.D. Cal. Mar. 12, 2012). Courts

1 estop a signatory party from arguing that arbitration with a non-
2 signatory is not required when 1) the claims are related to the agreement
3 containing the arbitration provision, 2) the relationship between the
4 signatory and non-signatory is sufficiently close, and 3) fairness
5 requires enforcing the arbitration provision. *Contec Corp. v. Remote*
6 *Solution Co., Ltd.*, 398 F.3d 205, 211 (2d Cir. 2005); *In re Toyota*, 2012
7 WL 826854 at 15; *Grigson v. Creative Artists Agency, LLC*, 210 F.3d 524,
8 527-28 (Tex. 2000); see also Application of Equitable Estoppel to Compel
9 Arbitration By or Against Nonsignatory-State Cases, 22 A.L.R. 6th 387
10 (2012).

11 After considering these factors, the Court concludes that Ms. Lauber
12 is estopped from arguing that the Encore Defendants may not exercise the
13 right to arbitrate under the Arbitration Rider. Midland purchased
14 charged-off accounts from HFC, including all of HFC's "rights, title, and
15 interest in each and every one of the Accounts described in the
16 Agreement." ECF No. [358](#)-1. It is undisputed that Ms. Lauber's
17 outstanding account was one of these purchased accounts. Accordingly,
18 the Court finds the relationship between Ms. Lauber, a signatory, and the
19 Encore Defendants, non-signatories, is sufficiently close. Also, the
20 claims asserted in the Lauber lawsuit are related to the underlying
21 Agreement: Ms. Lauber claims that the Encore Defendants violated the
22 FDCPA and Washington consumer protection laws when they attempted to
23 collect on the unpaid account. The Arbitration Rider's language broadly
24 covers such claims:

25 any claim, dispute or controversy (whether based upon contract;
26 tort, intentional or otherwise; constitution; statute; common
law; or equity and whether pre-existing, present, or future),

1 including initial claims, counter-claims, cross-claims, and
2 third-party claims, *arising from* or relating to this Agreement
or the relationships which result from this Agreement

3 ECF No. [358](#)-4 (emphasis added). Absent enforcement of the Arbitration
4 Rider under the circumstances, the Arbitration Rider would be "rendered
5 meaningless and the federal policy in favor of arbitration effectively
6 thwarted." *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 941, 948 (11th
7 Cir. 1999) (quoting *Sam Reisfeld & Son Import Co. v. S.A. Eteco*, 530 F.2d
8 679, 681 (5th Cir. 1976)).

9 Ms. Lauber also argues that the Encore Defendants waived any right
10 that they might have to submit to arbitration because they failed to
11 immediately move for arbitration when served with her complaint.
12 However, it was not until April 27, 2011, that the U.S. Supreme Court
13 overturned prior binding case law and held that an arbitration agreement
14 with a class-action waiver is enforceable and not unconscionable. *AT&T*
15 *Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011). The Encore
16 Defendants timely filed their motion to arbitrate six weeks later on June
17 6, 2011. Under the circumstances, the Encore Defendants did not waive
18 their right to seek arbitration under the Arbitration Rider.

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1 **C. Conclusion**

2 For the above-givens reasons, Ms. Lauber must submit her claims to
3 arbitration. Accordingly, **IT IS HEREBY ORDERED:** The Encore Defendants'
4 Motion to Compel Eva Lauber to Arbitrate Her Claims, **ECF No. 356**, is
5 **GRANTED:** Ms. Lauber's claims asserted in this lawsuit are stayed pending
6 completion of arbitration.

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter
8 this Order and distribute copies to counsel.

9 **DATED** this 16th day of March 2012.

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11 s/Edward F. Shea

EDWARD F. SHEA

12 United States District Judge

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